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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: AUG 19 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) affirmed the denial on appeal. The applicant subsequently filed a motion to reconsider. The motion will be granted and the previous director and AAO decisions will be affirmed. [1]

The applicant is a native and citizen of Guatemala who was present in the United States without a lawful admission or parole on June 6, 1998. On June 8, 1998, a Notice to Appear was served on him. On August 11, 1998, he was found to be inadmissible from the United States by an immigration judge and ordered removed in absentia, pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i), for being present in the United States without a lawful admission or parole. The record indicates that applicant failed to depart. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to legalize his status.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal (I-212 Application) requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute [for an I-212 application] should be granted [by the Secretary of Homeland Security, "Secretary", formerly the Attorney General], all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of

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[1] Pursuant to 8 C.F.R. § 103.5(3) (Requirements for motion to reconsider)

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The applicant in this case did not comply with the requirements set forth for a motion to reconsider.

Under 8 C.F.R. § 103.5(2), a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

Because the applicant submitted new documentation, his motion to reconsider will be treated as a motion to reopen.

> deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973). The director determined that the unfavorable factors in the applicant's case outweighed the favorable ones, and denied the applicant's I-212 Application accordingly.

The director found that the favorable factors in the applicant's case were that he had no criminal record and that his sister is a legal permanent resident in the United States.

The director found that the unfavorable factors in the case were that 1) the applicant was not admitted or paroled into the United States and that he entered the country illegally on or about June 6, 1998, 2) the applicant did not appear at his removal hearing on August 11, 1998, and 3) he did not depart from the United States.

On appeal, the applicant asserted that his legal permanent resident sister and her children are in the process of becoming U.S. citizens, and that once his sister becomes a citizen, she will file a petition for alien relative for the applicant. The applicant did not assert that his sister or her family were dependent on him in any way.

The applicant also asserted that he is not a criminal and that he did not appear for his August 11, 1998 removal hearing because he had previously filed a motion to change venue and never received the Notice of Hearing or the Removal Order. The applicant provided no evidence to establish that a motion to change venue or a notification of address change were ever filed with the Immigration and Naturalization Service ("Service", now known as the Bureau of Citizenship and Immigration Services "Bureau"), nor does the record reflect that a motion to change venue or a change of address were filed with the Bureau.

The AAO reviewed the director's decision as well as the information presented by the applicant on appeal and determined that the director's decision was correct and that the applicant was inadmissible pursuant to sections 212(a)(9)(A)(ii) and 212(a)(6)(A) of the Act. The AAO additionally determined that the applicant was statutorily ineligible for relief.

In his current motion to reconsider, the applicant restates that he is not a criminal, that he has legal permanent resident family members in the U.S., that he never intended to disregard immigration laws and that he wants to legalize his status in this country. The applicant additionally asserts that he is a person of good moral character and he submitted several letters from individuals attesting to his good character.

A review of the documentation in the record reflects that the unfavorable factors in the applicant's case outweigh the favorable factors. Moreover, the record reflects that the applicant is statutorily ineligible for relief under section 212(a)(6)(A) of the Act. The district director's denial of the application was thus proper and the previous director and AAO decisions will be affirmed.

ORDER: The previous director and AAO decisions will be affirmed.